SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY, PETITIONER,

vs.

W. E. WAGGONNER, SHERIFF, ETC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, SECOND CIRCUIT

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[fol. 5]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT, BOSSIER PARISH, LOUISIANA

EXTRACT FROM COURT MINUTES

INTERSTATE OIL PIPE LINE CO.

VERSUS

W. E. WAGGONNER, SHERIFF & EX-OFFICIO. TAX COLLECTOR

Number 19,628 Civil Docket

June 24, 1958	Default.
March 13, 1959	Case is set for trial on March 26, 1959.
March 26, 1959	Case is called for trial. Admission of facts is filed. The case is tried and is submitted on briefs, reserving the right of oral argument. The brief of plaintiff is to be filed within 30 days and the defendant is given an additional 30 days in which to file brief.
September 19, 1962	For reasons assigned in written opinion, the demands of plaintiff are rejected at plaintiff's cost. See opinion. Opinion is signed and filed.
September 28, 1962	Judgment is read in open Court. See decree. Judgment is signed and filed. On oral motion of counsel for plaintiff, order of suspensive and devolutive appeal is asked for and is granted by the Court, returnable to the Honorable Court of Appeal, Second Circuit, Shreveport, Louisiana, on November 12, 1962. Suspensive and devolutive appeal bond together is fixed at $150.00.

[fol. 6]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

Number 19,628

INTERSTATE OIL PIPE LINE CO.

VERSUS

W. E. WAGGONNER, SHERIFF & EX-OFFICIO TAX COLLECTOR

PETITION—Filed January 5, 1954

To the Honorable Twenty-Sixth Judicial District Court of Louisiana in and for the Parish of Bossier:

The petition of INTERSTATE OIL PIPE LINE COMPANY, a corporation of the State of Delaware, duly qualified to do business in the State of Louisiana, with respect represents:

1.

That W. E. Waggoner, Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, is indebted unto your petitioner in the sum of $1,315.35 (ad valorem taxes heretofore paid by it under protest) together with two per cent per annum interest thereon from December 30, 1953, for this to-wit:

2.

That there is within the geographic limits of the Parish of Bossier, Louisiana, a federal area known and identified as Barksdale Field which is (and was at all times referred to herein) a military post or establishment of the United States consisting of lands substantially all of which were conveyed to the Federal Government by instruments executed in the year 1930, recorded in Conveyance Book 102, pages 467, 469 and 472, Records of the Parish of Bossier.

3.

That the conveyances referred to—through which the lands described were acquired by the United States—were

executed with the consent and approval of the State of Louisiana in accordance with the provisions of the laws of the State relating thereto, under the terms of which exclusive jurisdiction of the lands conveyed was ceded or granted to the United States except in respect to the service of process issuing under State authority.

[fol. 7]

4.

That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described completely ousted all jurisdiction and authority of the State and its political subdivisions within such area (including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon—no such authority having been conferred by Act of Congress.

5.

That on January 1, 1953, petitioner owned two interstate oil pipe lines described as one 8" trunk line and one 10" trunk line, each of which extended a distance of 2.91 miles within the federal area referred to as Barksdale Field.

6.

That in preparing and compiling the assessments of oil pipe lines for the year 1953, the Louisiana Tax Commission illegally and erroneously included the pipe lines of your petitioner situated within the limits of Barksdale Field as though the same were subject to taxation by the State and the political subdivisions thereof for ad valorem tax purposes, extending valuations thereon at standard rates ($4500.00 per mile for the 8" line and $6300.00 per mile for the 10" line) aggregating $31,430.00, upon which the State and political subdivisions thereof having general authority to tax in Ward 2 of Bossier Parish then imposed or levied taxes for the year 1953 at the following rates aggregating $1315.35:

[fol. 8]

	Mills
State	5.75
Parish	4.00
Library	.60
Consolidated R.D. 1	6.00
Health Clinic	1.00
P/W School	10.00
Consolidated S.D. 13	9.50
Bossier Levee District	5.00
	41.85

7.

That on December 30th petitioner paid to the Sheriff and Tax Collector of the Parish of Bossier all ad valorem taxes levied against its properties in the Parish of Bossier for the year 1953 aggregating the sum of $7,679.15, which amount included the sum of $1,315.35 illegally levied without jurisdiction to do so upon the property of your petitioner situated within the limits of Barksdale Field; that the taxes paid by your petitioner to the extent of said sum of $1,315.35 were paid expressly under protest as permitted by law (R.S. 47:2110) and this action is brought to recover the amount so paid, together with interest thereon.

Wherefore, petitioner prays for service and citation hereof as the law directs and finally that there be judgment in its favor and against W. E. Waggonner, Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, Louisiana, in the sum of $1,315.35 with two per cent per annum interest thereon from December 29, 1953, until paid.

For all orders necessary and general relief.

Blanchard, Goldstein, Walker & O'Quin, Attorneys for Interstate Oil Pipe Line Company.

[fol. 9] *Duly sworn to by Leon O'Quin, jurat omitted in printing.*

[fol. 10] [File endorsement omitted]

[fol. 11]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY

VERSUS

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF PARISH OF BOSSIER, STATE OF LOUISIANA

ANSWER—Filed September 10, 1958

To the Honorable, the Twenty-Sixth Judicial District Court, Parish of Bossier, State of Louisiana:

Now into Court, through undersigned counsel, comes W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, State of Louisiana, who for answer to the plaintiff's petition herein with respect says:

1.

The allegations of Article 1 of plaintiff's petition herein are denied.

2.

Respondent admits that Barksdale Air Force Base, consisting of lands acquired by the United States primarily for military purposes, is situated within the geographical limits of Bossier Parish, Louisiana, but otherwise the allegations of Article 2 of plaintiff's petition herein are denied for lack of sufficient information to justify a belief in same. Further answering the allegations thereof, respondent shows that the instruments of conveyance referred to are the best evidence of that which they contain.

3.

Respondent denies the allegations of Article 3 of plaintiff's petition herein for lack of sufficient information to justify a belief in same. Further answering the allegations

thereof, respondent shows that the laws referred to are the best evidence of that which they contain, and their interpretation and application are matters and conclusions of law.

4.

Respondent denies the allegations of Article 4 of plaintiff's petition herein; and, further answering the allegations thereof, respondent shows that the laws referred to are the best evidence of that which they contain, and their interpretation and application are matters and conclusions of law.

[fol. 12]

5.

Respondent admits the allegations of Article 5 of the plaintiff's petition herein.

6.

Respondent admits the listing by the Louisiana Tax Commission of the plaintiff's oil lines situated within the geographical area of Barksdale Air Force Base for ad valorem taxes for the year 1953, and the levy of taxes thereon by the State and other authorized political subdivisions thereof at the alleged established rates, with an aggregate tax of $1,315.35, but otherwise the allegations of Article 6 of the plaintiff's petition herein are denied. Further answering the allegations thereof, respondent shows that said listing for, and levy of, ad valorem taxes for the year 1953 are the best evidence of that which they contain.

7.

Respondent admits that the plaintiff paid under protest to him the ad valorem taxes for 1953 on the oil pipelines listed within the geographical area of Barksdale Air Force Base in the sum of $1,315.35, but otherwise the allegations of Article 7 of plaintiff's petition herein are denied.

Wherefore, respondent prays: that, after due proceedings had, there be judgment rendered herein in favor of respondent, rejecting the plaintiff's demands; and for all

such additional relief as law, equity, and the nature of the case may permit.

Jack P. F. Gremillion, Attorney General of Louisiana.
Address: State Capitol, Baton Rouge, Louisiana.

George M. Ponder, First Assistant Attorney General.
Address: State Capitol, Baton Rouge, La.

Ferdinand A. Cashio, Special Assistant Attorney General.
Address: 1313 Centenary Blvd., Shreveport, La.

Counsel for Respondent, W. E. Waggonner, Sheriff and Ex-Officio Tax Collector of Parish of Bossier, State of Louisiana.

[fol. 13] *Duly sworn to by Ferdinand A. Cashio, jurat omitted in printing.*

[fol. 14]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY

v.

SHERIFF, PARISH OF BOSSIER

ADMISSIONS OF FACT FOR THE PURPOSE OF THE ABOVE ACTION—Filed March 26, 1959

1.

During the year 1930 the United States of America acquired title to a tract of land constituting approximately 22,000 acres situated in the Parish of Bossier, Louisiana, particularly described in the following conveyances, certified copies of which are to be filed with the record herein:

(A) Deed from the City of Shreveport, Louisiana, to the United States of America, dated November 8, 1930, and recorded in Conveyance Book 102, page 472, of the records of Bossier Parish, Louisiana;

(B) Deed from the State of Louisiana to the United States of America, dated August 30, 1930, and recorded in Conveyance Book 102, page 469, of the records of Bossier Parish, Louisiana;

(C) Deed from the Board of Commissioners of the Bossier Levee District to the United States of America, dated February 5, 1930, and recorded in Conveyance Book 102, page 467, of the records of Bossier Parish, Louisiana.

2.

The conveyances evidenced by the instruments referred to were donations of the properties described therein made pursuant to the provisions of the Constitution of the State of Louisiana (Article IV, §12) upon the condition and with the understanding that the United States would establish, operate and maintain a military air force base upon the lands conveyed.

3.

During the years 1930, 1931 and 1932 the government of the United States caused extensive runways, administrative buildings, hospitals, barracks, machine shops, hangars and numerous other structures and facilities required for [fol. 15] the maintenance of a military air force post or base to be constructed upon the lands so acquired costing many millions of dollars, which properties and constructions thereon (as an entity) now known as "Barksdale Field" or "Barksdale Air Force Base" have been maintained by the government at all times since, as required by military air force demands.

4.

Since the establishment of the Barksdale Air Force Base the same has been used continuously as a military post in

accordance with the purposes for which the lands upon which it is situated were acquired by the United States and the United States has at all times since the establishment of the Base (through the Secretary of War and later through the Secretary of the Air Force) possessed and exercised such jurisdiction and sovereign legislative and judicial power over the lands acquired by virtue of the deeds described in paragraph 1 hereof, to the extent that the same was vested by virtue of the Constitution and laws of the United States and of the State of Louisiana.

5.

No act of Congress of the United States specifically grants to the State of Louisiana jurisdiction and power to levy and collect taxes of the character involved in this suit.

6.

On January 1, 1953, plaintiff, INTERSTATE OIL PIPE LINE COMPANY owned two interstate oil pipe lines described as one 8" trunk line and one 10" trunk line, each of which extended 2.91 miles within the area referred to as Barksdale Field, the exact location of which lines as then constituted being delineated upon plat annexed hereto as Exhibit "Interstate" 1.

[fol. 16]

7.

The tracts traversed by the pipe lines of Interstate Oil Pipe Line Company within the limits of Barksdale Field (as shown upon Exhibit "Interstate" 1) included no part of the lands described in Public Land Order No. 701 referred to in the decision of the Supreme Court of the State in the case of *Murphy Corporation* v. *Fontenot*, 73 So. 2d. 180, 225 La. 379, and have been used at all times relevant herein exclusively for military purposes.

8.

Interestate Oil Pipe Line Company is engaged solely in the transportation of crude oil—primarily in interstate commerce; is not engaged in the production of oil, gas or

other minerals; has no interest whatever in any oil, gas or other minerals produced from any lands within the limits of Barksdale Field and no affiliation with any person or corporation engaged in such production, none of which has ever entered its pipe lines traversing the field limits.

9.

The public has at no time been permitted freedom of access to any portion of the lands within the limits of Barksdale Field traversed by the pipe lines referred to herein and the agents and employees of Interstate Oil Pipe Line Company have never been permitted upon those premises for the purposes of inspection or maintenance of said lines except when accompanied by military guard or escort in the presence of whom all such work must be performed.

10.

In preparing and compiling the assessments of oil pipe lines for the year 1953 the Louisiana Tax Commission included the pipe lines of Interstate Oil Pipe Line Company situated within the limits of Barksdale Field for ad valorem tax purposes extending valuations thereon at standard rates ($4,500.00 per mile for the 8" line and $6,300.00 per mile for the 10" line) aggregating $31,430.00, [fol. 17] upon which the State and political subdivisions thereof having general authority to tax in Ward 2 of Bossier Parish then imposed or levied the taxes for the year 1953 at the following rates, aggregating $1,314.35:

	Mills
State	5.75
Parish	4.00
Library	.60
Consolidated R. D. I	6.00
Health Clinic	1.00
P/W School	10.00
Consolidated S. D. 13	9.50
Bossier Levee District	5.00
	41.85

11.

On December 30, 1953, INTERSTATE OIL PIPE LINE COMPANY paid to the Sheriff and Tax Collector of the Parish of Bossier all ad valorem taxes levied against its properties in the Parish of Bossier for the year 1953, aggregating the sum of $7,679.15, which amount included the sum of $1,315.35 levied upon the pipe lines of that corporation situated within the limits of Barksdale Field, which latter amount ($1,315.35) was paid expressly under protest (LSA-R.S. 47:2110) as evidenced by a copy of the letter of transmittal of said payments annexed hereto as Exhibit "Interstate" 2.

The foregoing facts shall be deemed to have been admitted for the purpose of the above styled action in response to Requests for Admissions thereof, in accordance with LSA-R.S. 13:3784.

Leon O'Quin, Of Counsel for Plaintiff.

Ferdinand A. Cashio, Of Counsel for Defendant.

[fol. 43]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,044

NATURAL GAS AND OIL CORPORATION

VERSUS

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY

VERSUS

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION

VERSUS

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

OPINION OF THE COURT—September 19, 1962

These three cases were consolidated for the purpose of trial as they presented almost identical factual situations and involved the same question of law. The cases were originally tried and submitted to Judge Frank M. Dougherty, who was temporarily assigned to this District and by written stipulation of all parties the cases have been transferred for decision to either of the present Judges of this Court.

The plaintiff's are owners of certain oil or gas pipe lines and equipment connected therewith, situated on the United States Military Reservation known as "Barksdale Air Force Base", in Ward Two of Bossier Parish, Louisiana. They have paid under protest ad valorem taxes assessed against these lines and equipment to the Tax Collector for the Parish of Bossier, State of Louisiana, and other political subdivisions having taxing authority in Ward Two of this Parish, contending that the United [fol. 44] States Government has exclusive legislative authority over the Air Base area and that the State, and its subdivisions have no authority to levy taxes on property situated on the military reservation.

This allegation is based on the premise that the State of Louisiana had by Act 12 of 1892 ceded its jurisdiction over all lands thereafter acquired by the Federal Government for military or other governmental purposes and reserved only the right to administer criminal laws and serve civil process thereon.

It is further shown that Section 12 of Article IV of the State Constitution allowed a municipal corporation to acquire land and donate same to the Federal Government for flying fields, etc., and that the land area of Barksdale Air Force Base was donated to the U. S. Government by the City of Shreveport pursuant to this Section.

That Article I, Paragraph 8, Clause 17 of the United States Constitution provides that the Congress shall have exclusive power over all places purchased by the United States with the consent of the State Legislature to be used for the erection of forts, magazines, arsenals, etc. Plaintiff's contend that a donation would be also covered by this provision of the United States Constitution as the use of the word "purchase" was not to be given a limited definition.

The case principally relied upon by plaintiff's is *Surplus Trading Company versus Cook*, 281 US 647, in which the US Supreme Court held that the State of Arkansas had no jurisdiction to levy a tax on blankets purchased by a surplus trading company and situated within Camp Pike, the Court having found that Camp Pike came within the specific wording of Article 1, Section 8, Clause 17, relating

to "forts, magazines, arsenals, dockyards, and other needful buildings.

[fol. 45] Since this case however, there seems to be a tendency by the court to limit the definition of "forts, magazines, arsenals, etc., as contained in the above section of the Constitution and to allow the States to exercise taxing authority on private properties situated on government reservations not specifically stated in this constitutional provision. Particularly where the property taxed has no military function and where the tax is not being imposed either directly or indirectly on the Federal Government.

The underlying principle involved in the vesting of exclusive authority and jurisdiction in the Federal Government in these situations, is to prevent the States from doing any act or levying any tax which would interfere with or impede the military powers or governmental functions of the United States.

The Supreme Court of this State has held in the case of International Business Machine Corporation versus Ott, 89 S 2n, 193, that machines leased to the Federal Government in government buildings in New Orleans were subject to the State tax. The property there involved had a much closer connection with the governmental purpose than does the property involved in the cases under consideration.

The pipelines and oil field equipment belonging to plaintiff's and sought to be taxed, has no logical connection with or benefit to the military purpose of the Air Base.

In the case of Murphy Corporation Versus Fontenot, 73 S2d 180, the Louisiana Supreme Court held that the State could impose a severance tax on gas and oil produced from wells drilled on the same military reservation as we have involved in this case. The plaintiff's attempt to distinguish that case from the one at hand in the type of tax being imposed. In all of the cases cited by the parties which have been decided by either the United States Supreme Court or the State Supreme Court, bearing on the right of the State to tax property on Federal installa-

[fol. 46] tions, the type of tax sought to be levied has not been the deciding factor in the decisions. The Courts have on the other hand determined the authority of the State by analyzing the relation of the property to be taxed to

the governmental purpose and if no connection is found they have allowed the State to exercise taxing authority with the limited exception of the governmental installations falling specifically within the wording of Article I, Paragraph 8, Clause 17 of the Constitution, as in the Surplus Trading Company versus Cook case.

There either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base when said property is owned by other than the government or its personnel or this authority to tax has been removed altogether. The Murphy Corporation versus Fontenot case therefore has definitely decided this question insofar as the powers of the State of Louisiana over Barksdale Air Force Base are concerned.

There is little doubt left as to the intent of the United States government acting through its Department of Interior, when it provided in its oil and gas lease to plaintiff, Natural Gas and Oil, that the lessee should pay all taxes lawfully assessed by the *State* or the United States upon *improvements*, oil and gas produced from the lands, or other rights, *property* or *assets* of the *lessee*.

This contract is binding on both the parties to same and falls clearly within the language of the Murphy Corporation case.

There is also evidence in this case showing that the Air Force Base receives certain services from the political subdivisions of the State such as water and school facilities for base personnel. In line with the case of IBM versus Ott, 89 S 2d 193, and Silas Mason Company versus Tax Commission, 302 U. S. 186, the acceptance of these [fol. 47] services by the Federal Government would indicate that the United States has not manifested an intent to accept exclusive jurisdiction.

For the foregoing reasons the Court finds that the properties owned by all of the plaintiff's in these cases as described in the pleadings herein and located on Barksdale Air Force Base, are subject to taxation by the State of Louisiana, the Parish of Bossier and other taxing authori-

ties of the State in this Parish. Accordingly the demands of the plaintiff's should be rejected at their costs.

Rendered on this 19th day of September, 1962.

O. E. Price, Judge.

(*NOTE:* Typographical errors appearing in the above opinion are as they appear in the original.)

[fol. 49]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY,

VERSUS

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

JUDGMENT

This Cause having come on regularly for trial, evidence having been adduced, after hearing the arguments and briefs of counsel, the Court considering the law and the evidence to be in favor of the defendant for the reasons assigned in a written opinion filed herein on September 19, 1962,

It Is Ordered, Adjudged and Decreed that there be judgment herein in favor of the defendant, W. E. Waggoner, in his official capacity as Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana, and against the plaintiff, Interstate Oil Pipe Line Company, rejecting the latter's demands at its costs.

Judgment Rendered on September 19, 1962.

Judgment Read Aloud and Signed in Open Court, in Benton, Louisiana, on this the 28 day of September, A.D., 1962.

O. E. Price, Judge, Twenty-Sixth Judicial District Court, Parish of Bossier, State of Louisiana.

[fol. 52]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY
(now Humble Pipeline Company)

V.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

MOTION FOR AN ORDER RECOGNIZING CHANGE OF NAME—Filed October 4, 1962

Now comes plaintiff in the above styled cause—a corporation of the State of Delaware—and shows that by charter amendment effective July 31, 1961, its corporate name was changed to Humble Pipeline Company.

Wherefore, appearer prays that the record and proceedings in the above styled cause be amended by substitution of the new name for the name of plaintiff as heretofore set forth.

For all orders necessary and general relief.

Blanchard, Goldstein, Walker & O'Quin, By Leon O'Quin, Fifth Floor, First National Bank Building, Shreveport, Louisiana, Attorneys for Plaintiff.

ORDER RECOGNIZING CHANGE OF NAME—October 4, 1962

Considering the foregoing motion and affidavit annexed thereto,

It Is Ordered that the record and all proceedings in this cause be and the same are hereby amended by substitution of the name Humble Pipeline Company for the name of plaintiff as heretofore set forth.

Done and Signed on this 4th day of October, 1962.

ENOS C. McCLENDON, JR., Judge, 26th Judicial District Court of Louisiana in and for the Parish of Bossier.

[fol. 53]

STATE OF LOUISIANA :
PARISH OF CADDO :

Before me, the undersigned authority, personally came and appeared Leon O'Quin, who being first sworn deposes and says that he is of counsel for plaintiff in the foregoing motion; that all facts set forth therein are true and correct; and that said change of name through charter amendment has been duly filed in the office of the Secretary of State of Louisiana;

That this motion has been served upon Ferdinand A. Cashio, Esquire—1313 Centenary Boulevard, Shreveport, Louisiana—counsel for defendant, by mailing a copy thereof to him properly stamped and addressed.

LEON O'QUIN

Sworn to and subscribed before me, notary, on this 1st day of October, 1962.

George M. Simpson, Notary Public in and for Caddo Parish, Louisiana.

[fol. 76]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,044

NATURAL GAS & OIL CORPORATION,

v.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION,

v.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY,

v.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

STIPULATION

Counsel for the parties to the above entitled and numbered causes pending in the 26th Judicial District Court of Louisiana in and for the Parish of Bossier, being present upon Barksdale Air Force Base, hereby waive all statutory requirements regarding the taking of oral depositions and stipulate and agree that the deposition of Colonel Alfred J.

Hanlon, Jr., a witness for the plaintiff in each of said causes, be taken forthwith (Monday, January 26, 1959 at 2:30 P.M.) on oral examination before Ray J. Hanrahan, Court Reporter (First Judicial District Court), who shall record all questions and answers in shorthand and transcribe the same.

[fol. 77] It is further stipulated that the transcript of the testimony of the witness together with a copy of this Stipulation be returned by the reporter to the Court where said causes are pending to be used as evidence in each of said causes upon certification by the reporter that the deposition is a true record of the testimony given by the witness (who shall not be required to subscribe the same) subject to rejection by the Court of such portion or the whole thereof as may be objected to at the taking of same or such other legal objection (not relating to the form and manner of taking and returning the deposition) as may be made to the introduction thereof at the trial of the cause.

Clarence L. Yancey, Of Counsel for Natural Gas & Oil Corporation and Mississippi River Fuel Corporation.

Leon O'Quin, Of Counsel for Interstate Oil Pipe Line Company.

Ferdinand A. Cashio, Special Assistant Attorney General.

[fol. 78]

INTERSTATE EXHIBIT No. 6

IN THE CIVIL DISTRICT COURT, PARISH OF BOSSIER
STATE OF LOUISIANA

No. 19,044

NATURAL GAS & OIL CORPORATION,

vs.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION,

vs.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY,

vs.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

APPEARANCES:

MR. CLARENCE L. YANCEY, of counsel for Natural Gas & Oil Corporation and Mississippi River Fuel Corporation.

MR. LEON O'QUIN, of counsel for Interstate Oil Pipe Line Company.

MR. FERDINAND A. CASHIO, Special Assistant Attorney General.

Deposition of Colonel Alfred J. Hanlon, Jr., witness on behalf of the plaintiffs in the above entitled causes, taken pursuant to the attached stipulation before Ray J. Hanrahan, a notary public ex officio and official court reporter, First District Court, Caddo Parish, Louisiana, at the offices of Colonel Hanlon, Barksdale Air Force Base, State of Louisiana, on the 26th day of January, 1959.

[fol. 79] COLONEL ALFRED J. HANLON, JR. of lawful age, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. O'Quin:

Q. Colonel, how do the size and character of your facilities at Barksdale compare with other Air Force Bases?

A. I don't really know.

Q. Is this one of the largest Air Force Bases?

A. It is one of the larger ones that I know of, yes, sir.

Q. Can you give us some general idea of the buildings here, the plant here, and the personnel occupied here?

A. Yes. We have about eight thousand people employed on the base, including both military and civilian. We have a cantonment area which covers I would say about one thousand to fifteen hundred acres, and then we have the semi-improved part of the base which includes the air field proper, which probably covers another fifteen hundred acres, and then about nineteen thousand acres of unimproved lands, which includes what we refer to as the East Reservation, which is the area you have in question.

Q. The area Mr. Yancey has in question.

A. All right.

Q. This is all completely under fence?

A. Yes, sir.

Q. The public is excluded from the limits of Barksdale [fol. 80] Field?

A. Yes, sir. Well, the public isn't excluded but they have only controlled access to it.

Q. No one comes in without express permission?

A. That's right.

Q. And they could not just walk in if they chose to?

A. No, sir.

Q. Are you in any sense in any of the functions of the Air Force Base dependent upon the services or facilities furnished by the State or the Parish or any Parochial authority?

A. Well, we are dependent on them for public utilities, of course.

Q. You purchase those at the gate, do you not?

A. Yes, sir.

Q. They have nothing to do with the distribution or use of those utilities within the post?

A. Not to my knowledge, no.

Q. In other words you pay for those services as delivered to you at the Post gate?

A. That is my understanding, yes, sir.

Q. Colonel, do you know the situation of the pipe line owned by Interstate Oil Pipe Line Company?

A. Not in detail.

Q. You wouldn't know exactly the location of that pipe [fol. 81] line in 1953?

A. Not without referring to maps.

Q. I show you a plat which I will identify as Interstate No. 1 and ask you to state whether or not you can say that that is generally the location of the Interstate Oil Pipe line?

A. That is indicated in red here?

Q. Yes, sir, the red line, and the heavy red line shows the location within the limits of the field and the light red line outside the limits of the field?

A. I couldn't answer that from personal knowledge. I assume that this is probably the actual location of it.

Mr. O'Quin: Just mark that Interstate No. 1 for me. (Addressing reporter.)

Q. Colonel, are you familiar with the operation of this Post in years past?

A. How many years past?

Q. Well, any number?

A. I have only been here for the past—I have been Base Commander here for the past fourteen months. I am not familiar in detail with the operation of the Base prior to that time.

Q. Do you know generally speaking that it was the same as it is now?

A. Yes.

[fol. 82] Q. You know for a fact that it is, generally speaking, the nature of the operation at all similar Posts of the Air Force?

A. Yes, sir, as far as the Base is concerned, yes, sir.

Q. And in performing these functions within the limits of the Post those operations are conducted entirely under your direction?

A. No, not entirely.

Q. Then what other authority would be exercised?

A. The Wing Commander, the Commander of the 4238 Strategic Wing.

Q. But all functions are supervised and controlled by Air Force Personnel Officers exclusively?

A. Yes, sir.

Q. Military or Air Force—I am not too clear about what is Air Force and what is Army—but it is entirely under the direction and exclusive control of the Air Force authorities and officers?

A. That's right.

Q. Exclusive of any civilian authority?

A. That's right.

Mr. O'Quin: That is all.

Direct examination.

By Mr. Yancey:

Q. You are familiar, are you not, with the location of the oil and gas leases in the southeastern part of the Base, where the producing wells are located?

[fol. 83] A. Yes, sir.

Q. Could you tell me what use is being made at this time of that area by the military people, if any use is being made of it by them?

A. I can tell you what use we are putting the whole reservation to. We don't differentiate here between the leased portions and the unleased portions of the east reservation, because even in the leased areas we have retained the full surface rights and control of the surface area. We use the whole east reservation for quite a large number of things and we have plans for further use for it in the future.

Q. Excuse me, when you say east reservation, does that embrace the part that is under the oil and gas lease?

A. That's right. As I say we don't differentiate between the leased and non-leased areas as far as our thinking is concerned. We call it all the east reservation. Everything east of the flying field is considered the east reservation.

Q. I see, yes, sir.

A. We are using it right now for evasion and survival training of our SAC combat crews, not just for this Base but for half a dozen other Second Air Force Bases.

Q. Within the limits of security could you give us some idea of what that entails?

A. Yes, sir. It entails putting these combat crews out [fol. 84] there and teaching them how to survive in the wilderness. They spend about a week out there getting this survival training right out there in the woods; drilling in the woods and living off the land as much as possible, and it is a regular course of instruction for our combat crews to enable them to survive if they are ever forced down either in this country or in enemy territory.

Q. Are there other uses to which this area is put?

A. Yes, sir. A portion of it has been set aside for a Capehart family project, which will be built this coming year, two family dwelling units.

Q. Is that to house military personnel?

A. Yes, sir. It is to house the personnel of Bossier Base out there.

Q. Is that an exclusive operation of the military, this housing operation?

A. Yes, sir.

Q. Do any civilian authorities have anything to do with that?

A. Not as far as operating it or running it is concerned.

Q. Does this land in question have anything to do with serving a function as an approach area or tank drop area in the training of airmen?

A. Yes, sir. I can run through all these things if you want me to.

[fol. 85] Q. Yes, sir, if you will, please go ahead?

A. We have a large area of it set aside as a tip-tank salvo drop area, for the purpose of dropping these tip-tanks containing fuel from jet aircraft in case of an emergency. We have been harvesting the forests out there for about the last six years, which has realized quite a considerable yield for the Government. We have a large transmitter, SAC transmitter, and receiver set out there, located at two separate locations, one of the sites being at the north end of the reservation and the other one at the southwest corner of it.

Q. I notice you use the term SAC. Will you explain for the record what that means?

A. Strategic Air Command. It is part of our Strategic Air Command global communication system. We have an area set aside for bomb and explosive ordnance disposal, where we detonate our obsolete and obsolescent bombs and so forth, defective ordnance material of all types. We have an aero club strip we operate on the reservation.

Q. What is the purpose of that, Colonel?

A. It is a club for the use of military personnel and dependents and also for civilian employees; a flying club is what it is. They own and operate about eight light airplanes out there, and this is part of a SAC-wide and Air Force-wide program under Special Services, the same as [fol. 86] our officers' Clubs and N.C.O. Clubs and so forth. It is a morale and welfare organization. It enables our people to learn how to fly at a considerably lower rate than they would have to pay if they went downtown to take flying lessons.

Q. But that is under the supervision of the Air Force?

A. Yes, sir. The reservation is also very heavily used for recreation and game propagation; hunting and fishing and boating and picnics.

Q. Is that for the benefit of military personnel exclusively?

A. Yes, sir, and we have a rather ambitious program under way to develop the reservation for this program. It is a big morale factor too. We have been keeping attendance records on the reservation for the last eight or ten months and we have been averaging about seven thousand people a month out there, just going out there for fishing, hunting, boating and other recreational purposes, and for picnics. For the future our plans include two classified projects, which are official Air Force projects but which I can't discuss because of their classified nature. Both of them would involve, or one of them would involve considerable construction.

Q. Do you consider those to be important to the national security?

[fol. 87] A. Yes, sir, vitally. That is primarily why they are classified. An area of the reservation has also been recommended as a site for a possible future National Cemetery. There is also an area which has been set aside as a possible future golf course site in the event future planning and development of the Base proper requires that our present golf course be utilized for buildings.

Q. Would that be a recreational facility just for the military personnel stationed on the Base?

A. Yes, sir. That is about it.

Q. Colonel, would you care to comment on whether or not Barksdale is considered you might say one of the first lines of defense in the event of a national emergency?

A. Yes, sir, as a Strategic Air Command Base I think that goes without saying.

Q. Aren't you on an alert footing at this time on this Base so that in the event of a sudden emergency the Base would be on a war time footing almost immediately?

A. Yes, sir.

Q. Have I stated that correctly?

A. Yes, sir. That is common to all SAC bases.

Q. Doesn't one need a special permit or perhaps an armed guard with him to actually physically go on the portion of the Base we have been talking about?

A. No—

[fol. 88] Q. How would one go about that?

A. The access to the reservation is controlled but a special permit or an armed guard is not required.

Q. What is the control that is used?

A. We have a control point out there at the entrance to the reservation, at the Base Forestry Officers' building, where everybody is required to stop and register and state his purpose before he can go on out onto the reservation.

Q. In other words the ordinary civilian could not have access to that part of the reservation without the permission of the military authorities, is that correct?

A. That's right.

By Mr. O'Quin:

Q. What about the area over on the western portion where I have suggested this pipe line might be? What is the situation there, Colonel? Would civilians be permitted in there?

A. In the western area of the reservation?

Q. Yes, sir, those who come in your principal gate here, civilians who might come in for instance to inspect the pipe line of the Interstate Oil Pipe Line Company? Would they be accompanied by guards?

A. Yes, sir, in all probability they would be if they were in any of our restricted or close to any of our restricted areas of the Base.

[fol. 89] Q. Would the area in which this red line appears be within the restricted area you mentioned, as shown on the plat identified as Interstate No. 1?

A. Yes, sir, most of it would be close enough to our restricted areas to require some sort of escort.

Mr. O'Quin: That is all I have.

Mr. Yancey: Do you have any questions, Mr. Cashio?

Mr. Cashio: Yes, sir.

Cross examination.

By Mr. Cashio:

Q. Colonel, this map that counsel has referred to as having been identified—actually you did not identify this plat, did you?

A. No.

Q. It has been marked as Exhibit 1, but you have not identified it?

A. That's right.

Q. I just want to make the record clear. Now, Colonel, you have enumerated certain uses made of portions of the east reservation, the east reservation including the land which is under oil and gas lease in question. These uses are relative to the surface, aren't they?

A. Yes, sir.

Q. They don't pertain to anything underneath the surface?

A. No.

[fol. 90] Q. You don't claim nor do you exercise any rights underneath the surface of the part that is under oil and gas lease?

A. As far as the Air Force is concerned, no. As far as the Air Force is concerned we have no particular rights or no particular use or need for the mineral deposits underlying the reservation; if that is what you are talking about.

Q. Yes, sir.

A. However, the Department of the Interior, of course, is considerably interested in this.

Q. I was concerned with the various uses you mentioned that were being made of a portion of the east reservation.

A. No, sir, as far as our strictly military Air Force plans are concerned, other than the construction which will probably take place out there in the future, we have no use for the oil, as far as the military is concerned. There are other Departments of the Government, of course, which are vitally interested in the mineral deposits out there.

Q. And you have exercised no sub-surface rights of any kind, to your knowledge?

A. I don't know what you mean by sub-surface rights.

Q. Well, I have reference to the minerals?

A. We have never dug any wells. To my knowledge we [fol. 91] haven't exercised any sub-surface rights. This is not to imply, however, that I think we don't have them.

Q. Colonel, the Air Force doesn't possess any financial interest or control over the pipe lines or the equipment or fixtures, the machinery, used to recover oil and gas from the deposits in the east reservation or for the transportation of those minerals, is that correct?

A. Basically that is correct. We do, of course, exercise certain control insofar as the contract with these civilian companies are concerned, regarding maintenance of the areas and pipe lines and that sort of thing, and we still exercise control of the reservation as a whole as far as fire prevention and that sort of thing is concerned.

Q. To be more specific the Air Force doesn't own any of these pipe lines or fixtures or equipment?

A. No, sir.

Q. They are maintained exclusively by the private interests, are they not?

A. To the best of my knowledge, yes, sir.

Q. Just what type of control does the Air Force maintain insofar as those items are concerned?

A. Well, I wouldn't be able to tell you specifically without referring to the terms of the lease. However, generally, we usually do reserve the right to specify how these areas [fol. 92] will be maintained, with particular regard to fire prevention and removal of brush and that sort of thing.

Q. Safety factors you are speaking of?

A. Yes, sir.

Q. Is that the only type control you have reference to?

A. Yes, sir, as far as I know. I would not be able to quote you any more without referring to the leases we have.

Q. I don't know that this is material but since counsel touched upon it I thought I might ask you this. You have testified that the Base isn't dependent on any services rendered by the Parish or the State or local political subdivisions other than public utilities and that the Base purchases those utilities at the gate. Is that correct, Colonel?

A. That is basically correct, I think, yes, sir.

Q. Well, if we might add another service, is it not true that many of your personnel, children of your personnel, attend our public schools off the Base?

A. That is correct. Of course, the public schools are reimbursed for that by the Federal Government.

Q. Nevertheless they do use them?

A. Yes, sir.

Q. I just wanted to add that there were possibly other services that the Base was dependent upon that you did not [fol. 93] mention.

A. Yes, sir.

Q. In other words, when you mentioned public utilities, you did not intend to make that exclusive?

A. No, sir.

Q. That was just for illustrative purposes?

A. That is correct.

Q. Just an illustration?

A. Yes, sir, that's right.

Mr. Cashio: I think that is all.

Redirect examination.

By Mr. O'Quin:

Q. To go back to that matter, the attendance at schools that counsel speaks of, the attendance at schools off the Post—

A. Yes, sir.

Q. The Government does reimburse them according to the attendance at those schools?

A. Yes, sir, on a per capita basis.

Q. If they attend the Parish school or parochial or the City school, those authorities are reimbursed on the per capita basis?

A. The public schools, yes, sir, not parochial.

Q. I didn't use the word parochial in the sense of Catholic, but I meant Parish schools?

A. Yes, sir, that's right.

[fol. 94] Q. When you stated you referred to the use of only the utilities as illustrative, do you think of any other

services you get in the Post from the State and Parish or any other local authority?

A. Not offhand.

Q. You can't think of one and in fact there isn't any other, is there?

A. Not that I can think of.

Q. You have your own fire department?

A. Yes, sir.

Q. And, of course, you have your own police protection?

A. Yes, sir.

Q. You have everything that could be offered by the Parish, the State, and Municipality, that you conduct yourself inside the limits of the Post?

A. Yes, sir.

Mr. O'Quin: That is all.

Mr. Yancey: I have nothing else.

Mr. Cashio: That is all.

(Witness excused.)

(Signature waived.)

[fol. 95] *Duly sworn to by Ray J. Hanrahan, jurat omitted in printing.*

[fol. 102]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,044

NATURAL GAS AND OIL CORPORATION

—VS—

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 19,628

INTERSTATE OIL PIPE LINE CO.

—VS—

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION

—VS—

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

NOTE OF EVIDENCE—March 26, 1959

Evidence Adduced on the trial of the above entitled and numbered causes before His Honor, Frank M. Dougherty, Acting Judge of the Twenty-sixth Judicial District Court in and for Bossier Parish, State of Louisiana, at Benton, Louisiana, on the twenty-sixth day of March, A. D. 1959.

Reported by: Miss Hazel Autrey, Court Reporter.

[fol. 103] Appearances:

Blanchard, Goldstein, Walker & O'Quin, By Leon O'Quin, Counsel for: Interstate Oil Pipe Line Company.

Cook, Clark, Egan, Yancey & King, By Clarence Yancey, Counsel for: Natural Gas & Oil Corporation.

Ferdinand A. Cashio, Assistant Attorney General of Louisiana, Counsel for: W. E. Waggonner, Sheriff and Ex-Officio Tax Collector.

[fol. 104]

Tried.
March 26, 1959
at
Benton, Louisiana

Mr. O'Quin: If the Court please, we have what is actually three cases here involving in substance the same point of law. The question is the assessment for ad valorem tax purposes of property situated in Barksdale Field, one having to do with a pipeline, and the other other property of another corporation.

What we would like to do, because these cases don't—one would go to the Court of Appeal, and I think the other two would go to the Supreme Court. For that reason, we do not wish to consolidate them, even for trial, but we are going to ask the Court to consider, in rendering the opinion, the documents that are offered, to consider them in both cases.

In the case of Interstate Oil Pipeline Company versus the Sheriff of the Parish of Bossier, No. 19,628, I wish to offer the admissions of fact for the purpose of this action which has been signed by counsel for plaintiff and defendant.

The Court: Let the offering be filed.

(Filed in evidence, marked by the Clerk.)

Mr. O'Quin: This will be the admission only. Next, I wish to offer a plat of survey showing the location of the

pipelines of Interstate Oil Pipeline Company as the same [fol. 105] were situated on January 1, 1953, which is identified as Interstate Exhibit No. 1.

The Court: Let the exhibit be filed.

(Filed in evidence, marked Interstate Exhibit No. 1 by the Clerk.)

Mr. O'Quin: Next, I wish to offer copy of letter addressed to W. E. Waggoner, Tax Collector, dated December 30, 1953, setting forth the payment of taxes involved in this case as made under protest, and notice of intention to file suit, signed by W. M. Waller, Deputy Tax Collector, the instrument being filed as Exhibit Interstate 2.

The Court: Let the exhibit be filed.

(Filed in evidence, marked Interstate Exhibit No. 2 by the Clerk.)

Mr. Cashio: I might say at this point, if the Court please, that the defendant has admitted the payment of these taxes under protest in its answer.

The Court: Thank you.

Mr. O'Quin: I wish next to file a copy of the conveyance of properties forming the Barksdale Air Field, executed by the City of Shreveport in favor of the United States, dated November 8, 1930, recorded in Conveyance Book 102, page 472, Records of the Parish of Bossier, which is identified as Interstate Exhibit 3.

The Court: Mr. O'Quin, are you filing an original there?

Mr. O'Quin: That is a copy, Your Honor.

[fol. 106] The Court: I was going to give you leave to substitute. Let it be filed.

Mr. Cashio: It is a certified copy?

Mr. O'Quin: That was made by the abstract company.

Mr. Cashio: Here in Bossier?

Mr. O'Quin: Yes.

Mr. Cashio: We have no objection, if it please the Court.

The Court: Let it be filed.

(Filed in evidence, marked Interstate Exhibit No. 3 by the Clerk.)

Mr. O'Quin: Next, I wish to file a certified copy of the Deed from the State of Louisiana to the United States, dated August 30, 1930, recorded in Conveyance Book 102, page 469, records of the Parish of Bossier, identified as Interstate Exhibit 4.

The Court: Let the offering be filed.

(Filed in evidence, marked Interstate Exhibit No. 4 by the Clerk.)

Mr. O'Quin: I wish to file a certified copy of the Deed from the Board of Commissioners of the Bossier Levee District to the United States of America, dated February 5, 1930, recorded in Conveyance Book 102, page 467, Records of the Parish of Bossier, identified as Interstate Exhibit No. 5.

The Court: Let it be filed.

(Filed in evidence, marked Interstate Exhibit No. 5 by the Clerk.)

[fol. 107] Mr. O'Quin: I wish to file next the testimony of Colonel Alfred J. Hanlon, Jr., as taken by deposition de bene esse on January 26, 1959, the original of which has been returned in the record.

The Court: Let the deposition be filed.

(Filed in evidence, marked Interstate Exhibit No. 6 by the Clerk.)

Mr. O'Quin: That concludes Case No. 19,628.

[fol. 112] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 113]

IN THE COURT OF APPEALS, SECOND CIRCUIT OF THE STATE OF LOUISIANA

Nos. 9888, 9889, 9890

NATURAL GAS AND OIL CORPORATION, Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee

---

MISSISSIPPI RIVER FUEL CORPORATION, Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee

---

HUMBLE PIPE LINE COMPANY, Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee

---

Appealed from
Twenty-Sixth Judicial District Court of Louisiana
in and for the Parish of Bossier

Hon. O. E. Price, Judge

Shotwell & Brown; Oliver, Digby & Fudickar; Cook, Clark, Egan, Yancey & King, Attorneys for Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, Plaintiffs-Appellants.

Blanchard, Goldstein, Walker & O'Quinn, Attorneys for Humble Pipe Line Company, Plaintiff-Appellant.

Jack P. F. Gremillion, Attorney General of Louisiana; Carroll Buck, First Assistant Attorney General of Louisiana; Ferdinand A. Cashio, Assistant Attorney General of Louisiana, Attorneys for Defendant-Appellee.

Hon. George W. Hardy, Jr., Hon. Edward L. Gladney, Hon. H. W. Ayres, Hon. James E. Bolin, Judges.

[fol. 114] OPINION—February 7, 1963

AYRES, J.

In each of these cases, the respective plaintiff seeks to recover certain ad valorem taxes assessed and levied against it by the State of Louisiana and by its various taxing authorities, in Ward Two of Bossier Parish, Louisiana. The taxes which are sought to be recovered, in each instance, were paid by the plaintiff under protest, and thereafter these suits were instituted under the provisions of LSA-R.S. 47:2110.

The factual situation, identical as to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, is to be distinguished from that of the plaintiff, Humble Pipe Line Company. These differences will be noted in the course of this opinion. The same legal principles are, however, generally applicable to all three cases. The record made up on the trial consists of the testimony of Col. Alfred J. Hanlon, Jr., Base Commander of Barksdale Air Force Base, who appeared for the plaintiffs, taken by deposition pursuant to stipulation of the parties, and various documentary offerings and stipulation of counsel.

From a judgment rejecting its demands, each plaintiff has appealed to this court.

The United States of America acquired from the State of Louisiana, City of Shreveport, and the Board of Commissioners of the Bossier Levee District, in the year 1930, certain lands in Bossier Parish approximating 22,000 acres. The conveyances so made were admittedly donations. Shortly thereafter, Barksdale Air Force Base was constructed on a relatively small portion of that acreage and, since that time, the Government has continuously maintained and operated said base for military purposes.

Pertinent to the positions of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, it may be pointed out that, in 1951, it was determined that certain of the acreage within the total area acquired by the United [fol. 115] States of America, as aforesaid, was being drained of minerals through wells drilled on privately owned adjacent lands; consequently, jurisdiction over 2,060 acres thereof was transferred to the Department of Interior with the provision there is to be no interference with the primary use of Barksdale Air Force Base.

By virtue of a lease of said property, executed by the Department of Interior, Natural Gas and Oil Corporation drilled certain wells productive of oil and gas, which wells, with their equipment, have been assessed and levied upon for ad valorem tax purposes. (Natural Gas and Oil Corporation subsequently merged with the Mississippi River Fuel Corporation.)

As concerns the plaintiff, Humble Pipe Line Company, the taxes herein involved were imposed against two interstate oil trunk pipelines, of 8-inch and 10-inch diameters, respectively, belonging to this plaintiff and extending a distance of 2.91 miles within the acreage acquired by the United States of America, as aforesaid, which, however, are located not within the area covered by the oil, gas and mineral leases held by the other two plaintiffs, but within the developed area, or military reservation proper.

The sole question which is presented in these cases is whether or not the State of Louisiana, and its taxing authorities of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the respective plaintiffs, used and maintained by them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base. The plaintiffs contend that the State of Louisiana ceded its right to so tax such property within the said military reservation to the Federal Government and, consequently, now lacks such power. At the very foundation of their claim, of course, is Article I, Section 8, Clause 17, of the Constitution of the United States, and Act 12 of 1892 of the Louisiana Legislature, embodied in LSA-R.S. 52:1. The constitutional provision reads as follows:

[fol. 116] "The Congress shall have Power * * *

"To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to *exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;* * * *" (Emphasis supplied.)

The aforesaid legislative provision relied upon by the plaintiffs to support their claim of the State's cession of the power to tax in these instances reads thus:

"The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

"The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."

Of the total acreage acquired by the United States of America, in the year 1930, as aforesaid, the cantonment area of Barksdale Air Force Base covers about 1,000 to 1,500 acres, and an additional improved part of the base, which includes the airfield proper, comprises another 1,500 acres, leaving about 19,000 acres of unimproved land known as the East Reservation. It is in this last-mentioned area that Natural Gas and Oil Corporation and Mississippi River Fuel Corporation have their physical properties against which the ad valorem taxes have been assessed and levied.

Moreover, in *Murphy Corp.* v. *Fontenot* (S. Ct. 1954), 225 La. 379, 73 So.2d 180, 183, it was established that this land was set apart from the land used for the governmental purposes of the Air Force Department; in fact, there was a dividing fence between the oil field and the Air Force Base. The court there said:

> [fol. 117] "These private owners were granted the right of use and control over all instrumentalities, owner and constructed by them, such as drilling machines, towers, tanks and pipe lines for their private commercial purposes to explore for oil and gas and to reduce such to private ownership."

In other words, the instruments employed by the private businesses, Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, were entirely and exclusively within their own control. It might be emphasized that the land covered by the lease operations is only remotely related to the primary use of the reservation for military purposes. This was made so obvious in the *Murphy Corporation* case, supra, that the late Justice Moise, as organ of the court, found it necessary to say:

> "... the land leased was not to be used for the erection of a fort, magazine, arsenal, dockyard or other needful buildings for military purposes."

The tax was not one imposed upon, or in any way affecting, property or functions of the Federal Government. In *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U.S. 525, 5 S.Ct. 995, 1002, 29 L.Ed. 264, 269, the Supreme Court of the United States clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of its own powers. Thus, it was stated:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings,

with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the [fol. 118] sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over other places within her limits.*" (Emphasis supplied.)

Plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation contend that neither the *Murphy Corporation* case, supra, certiorari denied by Supreme Court of the United States, 348 U.S. 831, 75 S.Ct. 54, 99 L.Ed. 655, nor *Mississippi River Fuel Corporation* v. *Fontenot* (CCA 5), 234 F.2d 898, certiorari denied by Supreme Court of United States, 352 U.S. 916, 77 S.Ct. 213, 1 L.Ed. 2d 122, is appropriate because they involved gas gathering and severance taxes decided on principles not applicable to these cases. Despite the differences in the types of taxes involved, the principles as regards the jurisdiction of the State to tax are the same. It may be noted, too, that the provisions of the leases in the instant cases, imposing obligations on the lessees to pay taxes, are substantially the same as contained in the leases concerned in the cited cases.

The language employed in the *Murphy Corporation* case is pertinent to the issues here. There, the court stated:

"The acceptance . . . by the Secretary of War states that the property is to be used for military purposes. When the Secretary of War transferred certain portions of the land to the Department of the Interior, and the Commandant of the Air Base certified that such leases would not interfere with the governmental operations of the Air Base, we had a splendid affirmative of the position taken by the State.

"In the operation of the oil field, the lessees were not militarily engaged. The fugitive oil and gas when captured did not belong to the Federal government but to private owners. No severance tax is levied against the Government nor is there any tax levied on the lands or the instrumentalities of the Federal Government."

Similarly, in these instances, there is no tax levied against the Federal Government or any of its instrumentalities or property. In this connection, what was said by the Supreme [fol. 119] Court of the United States in *Esso Standard Oil* v. *Evans* (U. S. v. Evans), 345 U.S. 495, 73 S.Ct. 800, 97 L.Ed. 1174, is pertinent, to-wit:

"The Constitution does not extend sovereign exemption from state taxation to corporations or individuals contracting with the United States merely because their activities are useful to the government."

As to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, the provisions of the lease are the law of the case (*Murphy Corp.* v. *Fontenot*, supra). Under the terms of the lease agreement, in Section 2, under Rentals and Royalties, (7) (K), the lessee is required

"To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States."

The contentions of Murphy Corporation in the cited case were disregarded in the following language:

"To follow the plaintiffs' contentions, we must give no effect to the mandatory provisions of Section 2(7) (K) of the lease in question, and we must likewise say

that such a provision together with the pertinent authorities on Constitutional questions by the courts are mere abstractions affording no real protection."

Moreover, in the *Mississippi River Fuel Corporation* case, supra, answering the taxpayer's contentions with regard to the lease provision, the Fifth Circuit, Court of Appeal, said:

"Putting to one side all the refinements which have attended the long struggles over jurisdiction, as instanced in the cases, and over the effort to throw over private operations the protective mantle of governmental immunity, all that is presented for decision in this case is whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable under the general laws of the state for the severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use. For the same reason that the statute under which the exaction is [fol. 120] made is a general excise statute, not directed at any particular person or property but at all persons who are severers, it cannot be said that the provision in the lease obliging the lessees, as one of the considerations for it, to pay the taxes, was not fully effective."

These plaintiffs in the instant cases cannot clothe themselves with the mantle of governmental immunity any more so than could the Murphy Corporation in the cited case in the State Court, or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Their sole claim to immunity is the fact that their physical properties are situated within the enclosure of Barksdale Air Force Base. This can afford them no such immunity. The lease provisions are effective to insure payment by these plaintiffs of the ad valorem taxes imposed upon their physical properties.

The circumstances evidence the intention of the United States not to accept exclusive jurisdiction over the area donated for Barksdale Air Force Base. In *International Business Machines Corporation* v. *Ott* (S.Ct., 1956), 230 La. 666, 89 So.2d 193, there was involved a question of whether or not the State could levy ad valorem taxes on certain business machines owned by the plaintiff, but leased to the Federal Government, and situated at a site over which jurisdiction had been ceded to the United States. As organ of the court, on rehearing, Chief Justice Fournet said:

> "The view of presumed acceptance of ceded jurisdiction, which was followed in certain cases, was subjected to a thorough re-examination in two suits presented to the Court in the term beginning October, 1937: James v. Dravo Contracting Company, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155, and Silas Mason Co. v. Tax Commission, 302 U.S. 186, 58 S.Ct. 233, 82 L.Ed. 187."

In the *Dravo* case, immunity from a West Virginia "annual privilege tax" based on gross receipts was sought by a Pennsylvania contractor with respect to sums collected [fol. 121] under contracts with the United States Government for the building of structures within West Virginia. One of the issues was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government, and stated:

> *"'The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system.'"*

In the *Silas Mason* case, a similar tax was involved and the question there was whether certain of the areas in which

the contractors' work was performed were within the exclusive jurisdiction of the United States, in view of the acquisition by the United States and the provisions of the State statute. The court there stated:

> *"The mere fact that the Government needs title to property within the boundaries of a State * * * does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction."*

Our State Supreme Court ultimately concluded, in the *International Business Machines* case, supra, that the acceptance of services furnished by the City of New Orleans to the sites in question manifested an intent on the part of the Government not to accept exclusive jurisdiction. The court made this appropriate observation:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant. In the instant case it was shown that various services (fire protection, sewerage, water and drainage facilities, police traffic regulation) furnished by the City of New Orleans were used by the various locations, and that the United [fol. 122] States has failed to indicate an intention to exercise control in those respects; in fact, the acceptance of such services manifested a contrary intent on the part of the Federal Government. Silas Mason Co. v. Tax Commission of Washington, supra. We think, upon further analysis and study, that the rule of Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455, 456, 74 L.Ed. 1091, it [sic] not to be applied to the instant factual situation. In that case the U. S. Supreme Court was careful to point out that Camp Pike case directly within the words, '"forts, magazines, arsenals, dockyards, and other needful buildings"' of the constitutional provision, which decreed '"exclusive legislation in all cases whatsoever" over a place so purchased for such a purpose.'"

The testimony shows conclusively that, just as in the *International Business Machines Corporation* case, supra, the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the State and Parish authorities for these services. Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects.

Although the land traversed by plaintiff Humble Pipe Line Company's lines is not a part of the East Reservation of Barksdale Air Force Base the portion of which is covered by the oil, gas and mineral lease, or leases, involved in the companion cases, we may point out that the lease provision, Section 2, under Rents and Royalties, (7) (K), which imposed upon the lessee the obligation to pay all State taxes, evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base. This plaintiff cannot clothe itself with the mantle of governmental immunity any more [fol. 123] so than could the Murphy Corporation in the cited case in the State Court or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Its sole claim to immunity is the fact its physical property is situated within the enclosure of Barksdale Air Force Base. This can afford it no such immunity.

Plaintiff Humble Pipe Line Company is vested with a servitude across the lands of Barksdale Air Force Base under which its lines pass. The existence of this real right evidences an imperfect ownership of the Government in the area traversed by the pipelines. Thus, as to the area subjected to the servitude, the Government possesses only the naked ownership.

LSA-C.C. Art. 490.

In the case of *S. R. A.* v. *Minnesota* (1946), 327 U.S. 558, 90 L.Ed. 851, Mr. Justice Reed, as the author of the opinion, said:

> "This Court apparently has never directly passed upon the effect on federal sovereignty of the property's transfer by the United States to private hands.
>
> "There was no requirement in the act of cession for return of sovereignty to the state when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, § 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. *As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power.*" (Emphasis supplied.)

In that case, there was held to be a relinquishment of jurisdiction despite the fact that there was only an execu- [fol. 124] tory contract of sale with title remaining in the Government. Here, either the Government took the lands donated to it subject to the plaintiff's existing right of servitude, or a grant of right of way was made to the plaintiff by the Government. The record does not show which was the case. Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the *S. R. A.* case, it relinquished same.

For the aforesaid reasons, the conclusion appears inescapable that the taxes imposed in these instances are against

private property owned and possessed by plaintiffs, under their control and used by them in the conduct of their commercial businesses; that the taxes are not levied against the United States of America, nor against any of its property or against any of its agencies or instrumentalities; and that the State and its taxing authorities have jurisdiction to levy and impose such taxes.

The judgments appealed are accordingly affirmed at the cost of each of the plaintiffs in its respective suit.

Affirmed.

Rehearing refused April 1-1963.

Harold L. Booth, Clerk, Court of Appeal.

Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 125]

IN THE COURT OF APPEAL, SECOND CIRCUIT
OF THE STATE OF LOUISIANA.

No. 9888 Natural Gas & Oil Corp. vs. W. E. Waggonner, Sheriff

No. 9889 Mississippi River Fuel Corp. vs. W. E. Waggonner, Sheriff

No. 9890 Humble Pipeline Co. vs. W. E. Waggonner, Sheriff

(CONSOLIDATED)

On Application for Rehearing
by Plaintiffs-Appellants

ORDER DENYING PETITION FOR REHEARING—April 1, 1963

Rehearing Refused

April 1, 1963

HAROLD L. BOOTH
Clerk, Court of Appeal

[fol. 129] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 135]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 46706

HUMBLE PIPE LINE COMPANY, Plaintiff-Appellant,

vs.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee.

APPLICATION FOR WRIT OF CERTIORARI OR REVIEW—
Filed April 10, 1963

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court, State of Louisiana:

Humble Pipe Line Company, petitioner herein,* respectfully petitions this Court for a writ of certiorari or review (as prescribed by LSA-R.S. 13:4450 and the Rules of this Court) to review the final decision and judgment of the Court of Appeal, Second Circuit, State of Louisiana, rendered February 7, 1963, in the above styled case, designated No. 9890 upon the docket of that court, in which a motion for a rehearing was refused by the court on April 1, 1963; and for cause for the granting of such writ shows:

I.

Statement of the Case.

This is an action brought by plaintiff pursuant to the provisions of LSA-R.S. 47:2110 to recover ad valorem taxes

* By charter amendment effective July 31, 1961, the corporate name of plaintiff was changed from Interstate Oil Pipe Line Company to Humble Pipe Line Company, and that name substituted in this proceeding by order of the District Court dated October 4, 1962.

in the sum of $1,315.35 (with interest thereon) paid under protest. The demands of plaintiff were rejected by judgment of the trial court and that judgment affirmed on appeal.

[fol. 136] The taxes involved were ad valorem taxes levied and assessed for the year 1953** on behalf of the State of Louisiana and political subdivisions thereof having general authority to tax in Ward Two, Bossier Parish, Louisiana, upon valuations (as fixed by the Louisiana Tax Commission) of two trunk pipelines of plaintiff extending a distance of 2.91 miles within the limits of Barksdale Field, a military post or establishment of the United States described in the petition as follows:

> "That there is within the geographical limits of the Parish of Bossier, Louisiana, a federal area known and identified as Barksdale Field which is (and was at all times referred to herein) a military post or establishment of the United States consisting of lands substantially all of which were conveyed to the Federal Government by instruments executed in the year 1930, recorded in Conveyance Book 102, pages 467, 469 and 472, Records of the Parish of Bossier.
>
> "That the conveyances referred to—through which the lands described were acquired by the United States—were executed with the consent and approval of the State of Louisiana in accordance with the provisions of the laws of the State relating thereto, under the terms of which exclusive jurisdiction of the lands conveyed was ceded or granted to the United States except in respect to the service of process issuing under State authority.
>
> "That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described completely ousted all jurisdiction and authority of the State and its political subdivisions within such area

** The question of the validity of taxes of subsequent years is consequently indirectly involved.

(including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon—no such authority having been conferred by Act of Congress."

By stipulation of fact forming part of the record herein, it is admitted that,

"The tracts traversed by the pipe line of Interstate Oil Pipe Line Company within the limits of Barksdale Field (as shown upon Exhibit 'Interstate' 1) included no part of the lands described in Public Land Order No. 701 referred to in the decision of the Supreme Court of the State in the case of *Murphy Corporation* v. *Fontenot, 73 So. 2d 180, 225 La. 379,* and have been used at all times relevant herein exclusively for military purposes."

[fol. 137] and that,

"Interstate Oil Pipe Line Company is engaged solely in the transportation of crude oil—primarily in interstate commerce; is not engaged in the production of oil, gas or other minerals; has no interest whatever in any oil, gas or other minerals produced from any lands within the limits of Barksdale Field and no affiliation with any person or corporation engaged in such production, none of which has ever entered its pipe lines traversing the field limits."

II.

Issues.

The sole issue before the Court is the question of the territorial jurisdiction of the State and its subdivisions to impose ad valorem taxes upon the property of plaintiff situated entirely within the Federal enclave of Barksdale Field and the consequent validity vel non of the taxes involved.

III.

Questions of Law.

The question of law involved are:

(a) The effect of Act No. 43 of the Legislature of Louisiana for the year 1928 amending Section 12 of Article IV of the State Constitution to authorize the State and its political corporations to donate property to the United States for military uses, and Act No. 12 of the Legislature of Louisiana of 1892 ceding to the Government of the United States exclusive jurisdiction over property purchased or "otherwise" acquired by it—as evidence of the consent of the State to the acquisition by the United States of the lands comprising Barksdale Field which, under the provisions of the Constitution of the United States (Article 1, Par. 8, Cl. 17), if then obtained, vested in the United States exclusive "legislation" over the area.

[fol. 138] (b) The application of the rule that private personal property within an army camp or post, the lands for which were acquired by the United States with the consent of the legislature of the state in which such lands are situated, cannot be subjected to state taxation in view of the provisions of Article 1, Par. 8, Cl. 17, of the Constitution of the United States—as established in the landmark decision in *Surplus Trading Company* v. *Cook*, 281 U.S. 647, 74 L. ed. 1091.

(c) The application of the rule that acceptance by the United States of the session to it of exclusive jurisdiction over lands acquired with the consent of the legislature of the state in which such lands are situated is presumed, in the absence of evidence of a contrary intent—as established in *Silas Mason Company, Inc.* v. *Tax Commission of Washington*, 302 U.S. 186, 82 L. ed. 187, and *International Business Machines Corporation* v. *Ott*, 89 So. 2d 193, 230 La. 666.

(d) The question as to whether or not any of the facts mentioned in the opinion of the Court of Appeal herein considered within the proper application of the *International*

Business Machines decision has evidenced an intention of the United States not to accept exclusive jurisdiction over any part of the Barksdale Field area over which plaintiff's pipelines extend.

(e) The question of the irrelevancy of all facts stated and legal conclusions reached in the decision in *Murphy Corporation* v. *Fontenot*, 225 La. 379, 73 So. 2d 180.

IV.

Assignment of Errors.

It is submitted that the Court of Appeal in its opinion of February 7, 1963, erred in the following respects:

1. In not holding that the acceptance by the United States of the transfer of exclusive jurisdiction over the [fol. 139] lands forming Barksdale Field (acquired with the consent of the State of Louisiana) will be presumed in the absence of evidence of a contrary intent (*International Business Machines Corporation* v. *Ott*, 89 So. 2d 193, 230, La. 666); that as to the lands involved in this action there has been no evidence of any such contrary intent and under the rule announced in *Surplus Trading Company* v. *Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. ed. 1091, private personal property within the limits of the Field area involved herein cannot be subjected to State and Parish ad valorem taxation.

2. In regarding (opinion p. 8) the Supreme Court of this State as holding in the case of *International Business Machines Corporation* v. *Ott*, 230 La. 666, 89 So. 2d 193, that the acceptance by the United States of services (any services) furnished by the taxing authority to the site of a governmental operation manifests "an intent on the part of the government not to accept exclusive jurisdiction" over the site, when in that case the decision of the court was based solely upon the fact that the United States had failed *"to indicate an intention to exercise control"* in respect to services furnished by the city described as "fire protection, sewerage, water and drainage facilities, public traffic regulation."

3. In not holding that the uncontradicted testimony of Col. Hanlon (Post Commander) establishes that all operations and functions of every kind performed within the limits of Barksdale Field—with the possible exception of the area described in the case of *Murphy Corporation* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, (not involved in this action)—are supervised and controlled by Air Force personnel officers exclusively; that the delivery of utilities to the Post (no other services being furnished) is completed or terminated at the gate or outer limits of the field and that the exclusive supervision and control of the Air Force within the limits of the Field (a fort, magazine, arsenal, etc., within the exact meaning of Article 1, Par. 8, Cl. 17 of the Constitution of the United States) has at all times [fol. 140] indicated an intention to exercise exclusive jurisdiction over the Post Area within the rule of decision announced in *International Business Machines Corporation* v. *Ott*.

4. In not holding that the precise question at issue in this case is the question of territorial jurisdiction within the limits of Barksdale Field and that the fact that children of parents residing upon the Post may attend public schools of the Parish (for which the Parish is reimbursed by the Government) fails to evidence any intention on the part the Air Force personnel not to continue exclusive jurisdiction within the limits of the Post in every sense of that term—a factual situation in direct contrast to that presented in *Silas Mason Company* v. *Tax Commission*, 302 U.S. 186, 58 S.Ct. 233, 82 L.ed. 187, wherein the State of Washington conducted schools within the Federal area.

5. In holding in respect to the Barksdale Post area traversed by the right of way for plaintiff's pipelines that:

> "Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the S. R. A. case, it relinquished same" (opinion p. 11).

when in the case of *U. S.* v. *Unzeuta*, 281 U.S. 144, 74 L. ed. 761, the Supreme Court of the United States expressly held that the grant of a right of way to a railroad traversing Fort Robinson (in the State of Nebraska), although contemplating permanent use, did not alter the fact that the maintenance of the jurisdiction of the United States over the right of way as being a part of the reservation might be necessary in order to secure the benefits intended to be derived from the reservation—and when it has been admitted herein that the agents and employees of the Pipeline Company have never been permitted upon the area traversed by its pipelines for the purpose of inspection or maintenance except when accompanied by military guard or escort.

[fol. 141] 6. In regarding certain holdings of the Supreme Court of the United States as set forth in the opinion rendered in the case of *James* v. *Dravo Contracting Company*, 302 U.S. 134, 58 S.Ct. 208, 82 L. ed. 155—relating solely to the phase of that case involving the question of whether the tax imposed was invalid as laying a burden upon the operations of the Federal Government—as applicable to the distinctly separate phase of that case presenting the question of whether or not the State had territorial jurisdiction to levy the tax—as evidenced by the following statement made at page 11 of the opinion of the Court as though relevant to the issues in this cause, which involve solely the question of territorial jurisdiction to tax:

> "One of the issues [referring to the Dravo case] was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government. * * * "

7. In arriving at conclusions mentioned herein which, if accepted and applied, make the acquisition of exclusive jurisdiction by the United States over any "magazine,"

"arsenal" or military establishment a matter of practical impossibility.

V.

Brief of Errors Assigned.

We submit that in the decision rendered herein on February 7, 1963, the Court of Appeal erred in the respects specified, and we shall attempt herein to briefly explain our contentions with regard to the matters specified as error in the order set forth in the assignment.

Assignment 1.

We wish to refer particularly to the fact that the pipe lines of plaintiff traverse no part of the area included in the oil, gas and mineral lease involved in the case of *Murphy Corporation* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, and that [fol. 142] the case presented on behalf of Humble Pipe Line Company should not be confused in any respect with the cases of the Mississippi River Fuel Corporation and Natural Gas & Oil Corporation, whose properties are located within that area and whose cases—together with that of this applicant—have been disposed of in the one opinion of February 7, 1963, of the Court of Appeal.

Again, it is fundamental that it be recognized that the sole contention of Humble is that Barksdale Field was acquired by the United States with the consent of the State of Louisiana (Sec. 12, Art. 4, State of Louisiana Constitution), which consent under the provisions of Article 1, Par. 8, Cl. 17, of the Constitution of the United States conferred unto the United States exclusive jurisdiction over the lands comprising the Post area and further that the State by Act No. 12 of the Legislature of 1892 expressly ceded such exclusive jurisdiction without reservation. All other questions of the right of the State to tax property (when not acquired with the consent of the State or in respect to which exclusive jurisdiction has not been ceded) and questions of the right to tax instrumentalities or agencies of the United States are totally inapposite.

In the leading case of *Surplus Trading Company* v. *Cook*, 281 U.S. 647, 74 L. ed. 1091, the Supreme Court held that,

> "Where lands for forts, magazines, arsenals, dockyards, etc., are purchased by the United States with the consent of the state legislature, the jurisdiction theretofore residing in the state passes to the United States in virtue of Art. 1, § 8, cl. 17, of the Constitution, which prescribes that Congress shall have exclusive authority over places so acquired" (syl. par. 6).

There has never been any departure from the principles of that decision, which are expressly recognized in *International Business Machines Corporation* v. *Ott*, 89 So. 2d 193, 230 La. 666, although held inapplicable under the particular factual situation presented in that case, which was regarded as evidencing an intention on the part of the Federal Government not to accept exclusive jurisdiction [fol. 143] over the buildings involved. The court, however, recognized the rule that the acceptance of exclusive jurisdiction will be presumed in the absence of evidence to the contrary and distinguished the facts of the Surplus Trading Company case as follows:

> "We think, upon further analysis and study, that the rule of Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455, 456, 74 L.Ed. 1091, is not to be applied to the instant factual situation. In that case the U. S. Supreme Court was careful to point out that Camp Pike came directly within the words '"forts, magazines, arsenals, dockyards, and other needful buildings"' of the constitutional provision, which decreed '"exclusive legislation in all cases whatsoever" over a place so purchased for such a purpose.'" (230 La. 702.)

Barksdale Field is notoriously and typically a "fort", "magazine" or "arsenal" within the constitutional provision, governed solely by the Air Force of the United States, and there has been no evidence of any character that the Air Force has failed at any time or in any sense to exercise exclusive jurisdiction over the entire area involved in this suit as pointed out in the remaining assignments of error herein.

Assignment 2.

The decision of the Supreme Court of this State in the *International Business Machines* case was bottomed upon the decision of the Supreme Court of the United States in *Silas Mason Co. v. Tax Commission*, 302 U.S. 186, 58 S.Ct. 233, 82 L. ed. 187, in which the court found that the cooperation of the state of Washington and the Federal Government in connection with the Grand Coulee Dam project on the Columbia River made it clear that the Federal Government contemplated and intended the continued existence of state concurrent jurisdiction. In referring to the statute invoked and the evidence manifesting such intent, the court said:

> "Not only do we find no violence done to Federal right or frustration of Federal intent by the State's construction of its statute, but the evidence is clear that the Federal government contemplated the continued exist- [fol. 144] ence of State jurisdiction consistent with Federal functions and invited the cooperation of the State in providing an appropriate exercise of local authority over the territory." (p. 207, U.S.)

In the *International Business Machines* case, our Supreme Court said:

> "The fact that the legislature of a state has ceded exclusive jurisdiction is not the controlling consideration; reference must be held to the circumstances of the case which may well be evidence of intention on the part of the United States not to accept the grant."

It then found that the Federal buildings in the City of New Orleans in which the plaintiff's equipment was located received the same municipal protection and services that were furnished private buildings and structures without anything to indicate an intention on the part of the Government "to exercise control in those respects", and held that the acceptance of the municipal benefits under those circumstances manifested a contrary intent on the part of the Federal Government.

The crux of the decision was the failure of the Government to exercise any manner of control over the services and benefits furnished by the municipality—not the mere fact that some service was obtained from outside the buildings in question.

Assignment 3.

The case presented with regard to the occupancy of the separate buildings in the City of New Orleans and the circumstances surrounding the activities conducted within the limits of Barksdale Field are totally unlike and as far apart in every relevant respect as can possibly be imagined. The Federal buildings in New Orleans are occupied just as all other buildings are occupied and with the same reliance upon municipal services, fire protection and police. On the other hand, it is common knowledge—everyone knows and the evidence in this case conclusively shows—that the Air Force personnel exercise exclusive jurisdiction within the [fol. 145] limits of Barksdale Field involved in this case, which cannot even be entered without permission. The Post has its own fire and police protection; utilities are purchased and delivered at the Post gates for distribution solely under Post control. The intention of the Air Force to exercise exclusive jurisdiction within the Field is inescapable. In fact, if it does not exercise such jurisdiction, then we cannot imagine any manner in which such exercise can be practically accomplished.

We concede the rules announced in the *I.B.M.* case, but submit that the application of those rules in this case must result in the recognition of the exclusive jurisdiction of the United States within the limits of Barksdale Field.

Assignment 4.

In the opinion of the Court of Appeal herein, reference is made to the fact that children of parents residing upon the Post property attend the public schools of Bossier Parish and it is said that the fact that the "Government pays to the Parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less

dependent upon the State and Parish authorities for those services."

The question before the Court, however, is solely that of jurisdiction within the limits of the Post properties and whether or not the Federal Government has done anything which would indicate that it did not intend to exercise exclusive jurisdiction within those limits. We submit that the fact that children of servicemen living upon the Post property attend schools of the Parish situated off the Post has no more to do with the exercise of exclusive jurisdiction within those limits than the fact that the wives of officers living there shop at Goldring's.

Assignment 5.

The Court of Appeal has held in effect that the Federal Government could not have exclusive jurisdiction over the [fol. 146] rights of way of plaintiff's pipe lines situated upon the Post property simply because the Government is regarded as having an "imperfect title" to the strips upon which the pipe lines are located. In reaching that conclusion, the Court ignored the decision in *U. S. v. Unzeuta*, 281 U.S. 138, 74 L. ed. 761, in which the identical question was considered at length in reaching an opposite conclusion. The decision of the Supreme Court in that case is stated in the first paragraph of the syllabus as follows:

> "The cession by the state of Nebraska to the United States of jurisdiction over the Fort Robinson Military Reservation includes jurisdiction over the right of way of the Chicago & Northwestern Railway Company across such reservation, notwithstanding the proviso in the act of cession that the jurisdiction thereby ceded shall continue no longer than the United States shall own and occupy such reservation, and that the state shall retain concurrent jurisdiction with the United States so far as that civil process in all cases, and process against any person charged with crime committed within the state, may be executed therein in the same way and manner as if such jurisdiction had not been ceded."

In the course of the opinion, the Court said:

> "The mere fact that the portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction. Rights of way for various purposes, such as for railroads, ditches, pipe lines, telegraph and telephone lines, across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States. In Benson v. United States, 146 U.S. 325, 330, 36 L. ed. 991, 994, 13 Sup. Ct. Rep. 60, the jurisdiction of the Federal court was sustained with respect to an indictment for murder committed on a portion of the Fort Leavenworth Military Reservation in Kansas which was used for farming purposes. In Arlington Hotel Co. v. Fant, supra, the jurisdiction of the United States was upheld as to the portion of the reservation there in question which had been leased for use as a hotel. While the grant of the right of way to the railroad company contemplated a permanent use, this does not alter the fact that the maintenance of the jurisdiction of the United States over the right of way, as being within the reservation, might be necessary in order to secure the benefits intended to be derived from the reservation." (144, 145, U.S.)

In this case, the Air Force did exercise jurisdiction over the rights of way in question, and that fact is admitted of record:

> "The public has at no time been permitted freedom of access to any portion of the lands within the limits of Barksdale Field traversed by the pipe lines referred [fol. 147] to herein and the agents and employees of Interstate Oil Pipe Line Company have never been permitted upon those premises for the purposes of inspection and maintenance of said lines except when accompanied by military guard or escort in the presence of whom all such work must be performed." (Admission No. 9).

Assignment 6.

In the course of the opinion herein, the Court of Appeal referred to the case of *James*, v. *Dravo Contracting Company*, 302 U.S. 134, 58 S. Ct. 208, 82 L. ed. 155, and holdings of the Supreme Court therein in a manner which we cannot interpret except as meaning that the Court regarded the references made as relating to the phase of that case involving the question of territorial jurisdiction to tax. The Court said (p. 8) that:

> "One of the issues was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government, and stated:
>
> "'"*The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system.*"'"

Actually, the *Dravo* case involved two distinct questions stated by Chief Justice Hughes as follows:

> "The questions presented are (1) whether the State had territorial jurisdiction to impose the tax, and (2) whether the tax was invalid as laying a burden upon the operations of the Federal Government." (p. 160, L. ed.)

With regard to the first question, the statute of the State of West Virginia relied upon by the taxpayer as evidencing the consent of the state to the Federal acquisition reserved to the state concurrent jurisdiction over the lands involved, which reservation the Supreme Court held to be valid and effective.

[fol. 148] "In the present case the reservation by West Virginia of concurrent jurisdiction did not operate to deprive the United States of the enjoyment of the property for the purposes for which it was acquired, and we are of the opinion that the reservation was applicable and effective." (p. 166, L. ed.)

After disposing of the first phase of the case in the manner stated, the Supreme Court then undertook (commencing at page 149, U.S.) the consideration of the question of the asserted invalidity of the tax on the ground that it laid a direct burden upon the Federal Government. All the holdings referred to in the opinion of the Court of Appeal quoted above are found in that portion of the opinion of the Supreme Court restricted to the latter question and the quotation from the opinion of the Supreme Court (p. 150, U.S.) relates directly to that question previously stated as follows:

"Is the tax invalid upon the ground that it lays a direct burden upon the Federal Government?" (p. 149, U.S.)

We submit that the Court of Appeal has mistakenly regarded statements of the Supreme Court of the United States made with regard to a question totally foreign to that presented herein as appropriate in this cause and that it was error to accept those statements as controlling issues herein in any respect.

A similar erroneous regard for or reliance upon statements made by the Supreme Court in a case presenting a totally different question from that presented herein appears from the following quotation from the opinion of the Court of Appeal commencing on page 4:

"In Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 5 S. Ct. 995, 1002, 29 L. ed. 264, 269, the Supreme Court of the United States clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of its own powers. Thus, it was stated:

"Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or im- [fol. 149] pair their effective use for the purpose designed. Such is the law with reference to all instrumentalities created by general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over other places* within her limits." (Emphasis supplied by the Court)

In that case the Supreme Court held that Fort Leavenworth had not been acquired by the United States with the consent of the state of Kansas and that consequently the jurisdiction of the Federal Government over the area was dependent upon the cession of jurisdiction by act of the legislature of that state, in which statute the right to tax the property of the plaintiff railway company had been validly reserved by the state.

"As already stated, the land constituting the Fort Leavenworth military reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a state; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission into the Union. It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post." (p. 539, U.S.)

In the case presented herein, the lands comprising Barksdale Field were acquired by the United States with the consent of the state of Louisiana, and further exclusive jurisdiction over the area was specially ceded by an act of the Legislature. Any reference to the case of *Fort Leavenworth R. R. Co.* v. *Lowe* as authority for any decision rendered in respect to this plaintiff we submit is manifestly erroneous.

Assignment 7.

If the facts of this case, even as stated in the opinion of the Court of Appeal, do not disclose the exercise of exclusive jurisdiction within the limits of Barksdale Field, we submit that any such exclusive jurisdiction is a practical impossibility.

* * * * * * *

[fol. 151] Blanchard, Goldstein, Walker & O'Quin, By Leon O'Quin, Fifth Floor, First National Bank Building, Shreveport, Louisiana, Attorneys for Plaintiff-Appellant.

[fol. 227]

IN THE SUPREME COURT OF LOUISIANA

New Orleans

No. 46,706

HUMBLE PIPE LINE COMPANY,

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish.

ORDER DENYING APPLICATION—May 14, 1963

In re: Humble Pipe Line Company applying for certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Bossier.

Writ refused. The judgment complained of is correct.

FWS, JBF, JBH, EHMcC, WBH, JWS.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 228]

SUPREME COURT OF THE UNITED STATES

No. 329—October Term, 1963

HUMBLE PIPE LINE COMPANY, Petitioner,

vs.

W. E. WAGGONNER, Sheriff, etc.

ORDER ALLOWING CERTIORARI—October 21, 1963

The petition herein for a writ of certiorari to the Court of Appeal of the State of Louisiana, Second Circuit, is granted. The case is consolidated with No. 354 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.